

# FRIER LEVITT

A T T O R N E Y S A T L A W

19 Microlab Road  
Suite A  
Livingston, NJ 07039  
(973) 535-1660

Attorneys for Third-Party Defendant, Consolidated Children's Apparel

RACHEL ADJMI,

Plaintiff,

v.

SOVEREIGN BANK and SOLOMON  
DWEK,

Defendants.

SOVEREIGN BANK,

Counterclaim, Cross-claim and  
Third-Party Plaintiff,

v.

RACHEL ADJMI, in her individual capacity  
and as executrix of the estate of Jack Adjmi;  
JACK ADJMI, deceased, his heirs, devisees and  
personal representatives, and his their or any of  
their successors in right, title and interest;  
STATE OF NEW YORK; UNITED STATES  
OF AMERICA; SUN NATIONAL BANK, as  
Successor by Merger to COMMUNITY BANK  
OF NEW JERSEY, a New Jersey banking  
corporation; ANSELL TRUST; LIBERTY  
MEDICAL; DEAL YESHIVA, INC;  
UNKNOWN TENANTS 1-10;  
CONSOLIDATED CHILDREN'S  
APPAREL, INC.; AMY F. ANNECHARICO;  
JOHN DOES 1-10; ABC CORPORATIONS  
1-10; and SOLOMON DWEK,

Counterclaim, Cross-claim and  
Third-Party Defendants.

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

Chapter 11

Case No: 07-11757 (KCF)  
Adversary No: 07-01555 (KCF)

**CERTIFICATION OF JONATHAN E.  
LEVITT IN SUPPORT OF THIRD-  
PARTY DEFENDANT'S,  
CONSOLIDATED CHILDREN'S  
APPAREL, INC., NOTICE OF MOTION  
TO DISMISS THE COMPLAINT OF  
THIRD-PARTY PLAINTIFF,  
SOVEREIGN BANK AND FOR  
SANCTIONS**

**JONATHAN E. LEVITT, ESQ.**, of full age, does hereby certify as follows:

1. I am an attorney at law of the State of New Jersey and a member of the law firm of FRIER & LEVITT, LLC, attorneys for third-party defendant, Consolidated Children's Apparel, Inc..

2. I am fully familiar with the facts and circumstances herein based on my personal knowledge and the information and documentation contained in this firm's files in this matter. I make and submit this Certification in support of third-party defendant's motion to dismiss the complaint of Third-party plaintiff, Sovereign Bank, for failure to comply with Court Order dated August 26, 2008 and pursuant to F.R.C.P. Rule 37(b)(2)(v) and Bankruptcy Rule 7037 and for sanctions pursuant to F.R.C.P. Rule 37(d).

3. Annexed hereto as Exhibit "A" is a Certification of Michelle L. Greenberg, Esq. in support of the motion set forth on personal knowledge.

4. Consistent with these Court rules, we respectfully request that the Court enter an Order dismissing the Complaint of Third-Party Plaintiff, Sovereign Bank, imposing monetary sanctions and for such other relief as this Court deems just and proper.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I may be subject to punishment.

/s/ Jonathan E. Levitt  
Jonathan E. Levitt

Dated: October 28, 2008

## **EXHIBIT “A”**

# FRIER LEVITT

A T T O R N E Y S A T L A W

19 Microlab Road  
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(973) 535-1660

Attorneys for Third-Party Defendant, Consolidated Children's Apparel

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SOVEREIGN BANK,

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personal representatives, and his their or any of  
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STATE OF NEW YORK; UNITED STATES  
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1-10; and SOLOMON DWEK,

Counterclaim, Cross-claim and  
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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

Chapter 11

Case No: 07-11757 (KCF)  
Adversary No: 07-01555 (KCF)

**CERTIFICATION OF MICHELLE L.  
GREENBERG IN SUPPORT OF  
THIRD-PARTY DEFENDANT'S,  
CONSOLIDATED CHILDREN'S  
APPAREL, INC., NOTICE OF MOTION  
TO DISMISS THE COMPLAINT OF  
THIRD-PARTY PLAINTIFF,  
SOVEREIGN BANK AND FOR  
SANCTIONS**

**MICHELLE L. GREENBERG**, of full age, does hereby certify as follows:

1. I am an attorney at law of the State of New Jersey and an associate of the law firm of FRIER & LEVITT, LLC, attorneys for third-party defendant, Consolidated Children's Apparel, Inc..

2. I am fully familiar with the facts and circumstances herein based on my personal knowledge and the information and documentation contained in this firm's files in this matter. I make and submit this Certification in support of third-party defendant's motion to dismiss the complaint of Third-Party plaintiff, Sovereign Bank, pursuant to F.R.C.P. Rule 37(b)(2)(v) and Bankruptcy Rule 7037 and for monetary sanctions pursuant to F.R.C.P. 37(d).

**Procedural History**

3. On November 3, 2006, third-party plaintiff, Sovereign Bank (hereinafter "Sovereign"), interposed a third-party complaint and cross claim against third-party defendant, Consolidated Children's Apparel, Inc, (hereinafter "Consolidated") seeking damages grounded in the equitable doctrine of unjust enrichment.

4. On August 8, 2007, Consolidated filed an answer to the third-party complaint that also embodied a cross claim against co-defendants Deal Yeshiva, Inc., Liberty Medical, Amy F. Annecharico and Solomon Dwek.

5. On November 1, 2007, Consolidated served Sovereign with interrogatories seeking to obtain information regarding, among other things, Sovereign's allegation – in Count Four of the Complaint – that "Jack Adjmi transferred or caused to be transferred the sum of \$402,636.00 to Consolidated Children's Apparel." The responses were due on or about December 1, 2007 (nearly nine months ago). (See a copy of the letter enclosing interrogatories annexed hereto as Exhibit "A").

6. Consolidated has been diligent in their efforts to conduct discovery in this matter and has attempted to resolve the discovery disputes that were the subject of a motion decided by Order dated August 26, 2008. That motion sought an Order compelling Sovereign to answer the interrogatories served by Consolidated.

7. Even while the motion was pending, I continued in good faith to resolve the issue and agreed to withdraw the motion upon receipt of a Stipulation that responses would be served by August 25, 2008.

8. This good faith effort is exhibited in the email exchange with Alyson Fiedler, Esq. and Louis DeLucia, Esq. annexed hereto as Exhibit "1". As set forth in the email, Sovereign attorneys agreed to provide responses to interrogatories by August 25, 2008 and agreed to execute a Stipulation to that extent. (See copy of August 15, 2008 email exchange annexed hereto as Exhibit "1")

9. I provided a stipulation setting forth the agreement and awaited response from Sovereign's counsel. The stipulation was never signed and the motion to compel was granted by Order dated August 2, 2008. (See copy of Order annexed hereto as Exhibit "2").

10. On August 26, 2008 I served the Order on counsel.

11. On September 9, 2008 I sent an email to Sovereign's counsel to find out whether they intended to comply with the August 26, 2008 Order. (See copy of September 9, 2008 email annexed hereto as Exhibit "3").

12. Sovereign did not comply with the Court order.

13. I made one final attempt to obtain the Court ordered discovery by email dated October 20, 2008. (See copy of email annexed hereto as Exhibit "4").

14. As of this date, Sovereign has failed to provide the Court ordered discovery and counsel has not responded to my October 20, 2008 email. <sup>1</sup>

15. Sovereign has not provided any basis for their failure to answer interrogatories for a period of eleven (11) months. The only logical reason must be that the responses are damaging to Sovereign's case and helpful to Consolidated's defense.

16. Sovereign should not be permitted to pursue their claim against Consolidated since they have failed to provide responses to discovery and have completely impeded Consolidated's efforts to defend the case. There must be consequences to Sovereign's wanton disregard of Consolidated's discovery request and the August 26, 2008 Court Order.

17. F.R.C.P. Rule 37(b)(2)(a)(v) and Bankruptcy Rule 7037 permits this Court to issue an order dismissing Sovereign's complaint.

18. In addition, F.R.C.P. Rule 37(d)(1) permits this Court to impose sanctions against Sovereign for failure to comply with Court Order. Sanctions are warranted in this case since Sovereign has willfully disregarded Consolidated's numerous good faith attempts to obtain discovery and more importantly, has willfully disobeyed this Court's August 26, 2008 Order. As a result, Consolidated has been required to incur additional and unnecessary attorneys' fees in pursuing this matter.

19. Consistent with these Court rules, we respectfully request that the Court enter an Order dismissing the complaint of Sovereign and imposing monetary sanctions against Sovereign.

20. We respectfully request that upon Order of this Court, we be afforded ten (10) days to provide a Certification of Services for the award of sanctions.

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<sup>1</sup> Sovereign has provided **uncertified** responses to interrogatories which consist of general objections and which were sent in draft form subject to client review. It is submitted that this is not in compliance with the Federal Rules of Civil Procedure or the August 26, 2008 Court Order.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I may be subject to punishment.

/s/ Michelle L. Greenberg  
Michelle L. Greenberg

Dated: October 28, 2008



## **EXHIBIT “1”**

**Michelle L. Greenberg**

**From:** FiedlerA@gtlaw.com  
**Sent:** Friday, August 15, 2008 12:29 PM  
**To:** Michelle L. Greenberg  
**Cc:** DeluciaL@gtlaw.com  
**Subject:** RE: Consolidated adv. Sovereign

We can stipulate to provide the responses by August 25th. Please forward the draft stipulation for our review. Thank you.

**From:** Michelle L. Greenberg [mailto:MGreenberg@frierlevitt.com]  
**Sent:** Friday, August 15, 2008 12:16 PM  
**To:** Fiedler, Alyson (Assoc-NJ-Bky)  
**Subject:** RE: Consolidated adv. Sovereign

Alyson,

I am willing to adjourn the motion, not withdraw it, but need an assurance from you that your client's responses will be meaningful and responsive, not general objectives and/or references to documents. In addition, I will need the responses by August 25, 2008 so that we have them in advance of Ravaschier's deposition.

Please advise.  
Michelle

**From:** FiedlerA@gtlaw.com [mailto:FiedlerA@gtlaw.com]  
**Sent:** Friday, August 15, 2008 11:53 AM  
**To:** Michelle L. Greenberg  
**Cc:** DeluciaL@gtlaw.com  
**Subject:** RE: Consolidated adv. Sovereign

Confidential - For Settlement Purposes Only

Michelle,

We will agree to stipule to provide further answers to the interrogatories by the end of the first week of September provided that you withdraw your motion to compel (without prejudice). Please advise. Thank you.

- Alyson

**From:** Michelle L. Greenberg [mailto:MGreenberg@frierlevitt.com]  
**Sent:** Friday, August 15, 2008 11:18 AM  
**To:** Fiedler, Alyson (Assoc-NJ-Bky)  
**Subject:** RE: Consolidated adv. Sovereign

Thanks. I have reviewed this and as discussed yesterday you have not responded to interrogatories: 15, 17, 18, 24, 25, 26, and 27. I cannot agree to withdraw my motion without responses to these rogs.

Thanks,  
Michelle

10/28/2008

**From:** FiedlerA@gtlaw.com [mailto:FiedlerA@gtlaw.com]  
**Sent:** Friday, August 15, 2008 10:38 AM  
**To:** Michelle L. Greenberg  
**Cc:** DeluciaL@gtlaw.com  
**Subject:** RE: Consolidated adv. Sovereign

Michelle, please see the attached, dated November 20, 2006, and kindly call me to discuss. Thank you.

- Alyson

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**From:** Michelle L. Greenberg [mailto:MGreenberg@frierlevitt.com]  
**Sent:** Friday, August 15, 2008 10:04 AM  
**To:** Fiedler, Alyson (Assoc-NJ-Bky)  
**Subject:** Consolidated adv. Sovereign

Alyson,

I reviewed my file and do not see a copy of your Initial Disclosures. Please email to me so that I can get back to you regarding your answers to interrogatories.

Thanks.  
Michelle

Very truly yours,

Michelle L. Greenberg, Esq.  
Frier & Levitt, LLC  
19 Microlab Road  
Suite A  
Livingston, NJ 07039  
(973)535-1660  
(973)535-0650 fax  
[mgreenberg@frierlevitt.com](mailto:mgreenberg@frierlevitt.com)  
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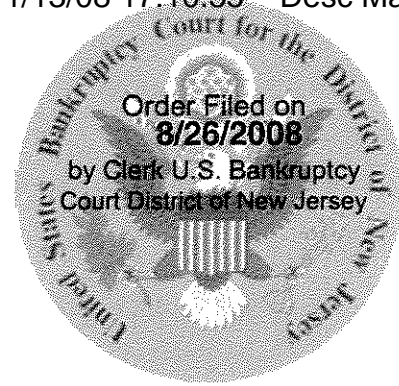
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10/28/2008

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10/28/2008

## **EXHIBIT “2”**



**FRIER LEVITT**  
ATTORNEYS AT LAW

19 Microlab Road  
Suite A  
Livingston, NJ 07039  
(973) 535-1660

Attorneys for Third-Party Defendant, Consolidated Children's Apparel

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Plaintiff,

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DWEK,

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SOVEREIGN BANK,

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personal representatives, and his their or any of  
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CONSOLIDATED CHILDREN'S  
APPAREL, INC.; AMY F. ANNECHARICO;  
JOHN DOES 1-10; ABC CORPORATIONS  
1-10; and SOLOMON DWEK,

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

Chapter 11

Case No: 07-11757 (KCF)

Adversary No: 07-01555 (KCF)

**ORDER TO COMPEL  
RESPONSE TO  
INTERROGATORIES**

The relief set forth on the following page is hereby ORDERED.

**DATED: 8/26/2008**

  
Honorable Kathryn C. Ferguson  
United States Bankruptcy Judge

**THIS MATTER** having been opened to the Court by Frier & Levitt, LLC, attorneys for Third-Party Defendant, Consolidated Children's Services, for an Order compelling third-party plaintiff, Sovereign Bank, to provide fully responsive answers to third-party defendants interrogatories, and the Court having considered any responsive or opposition papers, and for good cause shown;

**IT IS** on this 26th day of August, 2008;

**ORDERED**, third-party Plaintiff, Sovereign bank provide fully responsive answers to interrogatories within ten (10) days of the receipt of this Order; and it is further

**ORDERED**, that a copy of this Order shall be served upon defendants and counsel for Plaintiff within seven (7) days of the date hereof.

## **EXHIBIT “3”**



**Michelle L. Greenberg**

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**From:** Michelle L. Greenberg  
**Sent:** Tuesday, September 09, 2008 9:21 AM  
**To:** 'DeluciaL@gtlaw.com'; 'FiedlerA@gtlaw.com'  
**Subject:** Consolidated adv. Sovereign

Lou and Alyson,  
I have not received your client's responses to interrogatories as required by the Order of Judge Ferguson. Please advise when I will receive this Court ordered discovery.

Thank you,  
Michelle

Very truly yours,

Michelle L. Greenberg, Esq.  
Frier & Levitt, LLC  
19 Microlab Road  
Suite A  
Livingston, NJ 07039  
(973)535-1660  
(973)535-0650 fax  
[mgreenberg@frierlevitt.com](mailto:mgreenberg@frierlevitt.com)  
[www.frierlevitt.com](http://www.frierlevitt.com)

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10/28/2008

## **EXHIBIT “4”**

**Michelle L. Greenberg**

---

**From:** Michelle L. Greenberg  
**Sent:** Monday, October 20, 2008 3:58 PM  
**To:** DeluciaL@gtlaw.com; FiedlerA@gtlaw.com  
**Subject:** Consolidated Children's Apparel adv. Sovereign

Lou and Alyson,

I am writing because I have still not received your client's answers to discovery as required by Court Order dated August 26, 2008. Specifically, as discussed several times, your client has not responded to interrogatory 16, 17, 18, 24, 25, 26 and 27. We discussed this in the past and you assured me that you would provide me with a responsive answer, not an objection.

I will afford you one week to provide me with these significantly overdue responses. Otherwise I will have no choice but to seek Court intervention for failure to comply with a Court Order. I hope that you will respond so that this is not necessary.

Thank you,  
Michelle

Very truly yours,

Michelle L. Greenberg, Esq.  
Frier & Levitt, LLC  
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